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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 TAWNY G. LITTLE,

9 Plaintiff,

10 v.

11 NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

12 Defendant.

CASE NO. C13-1313-BAT

**ORDER GRANTING MOTION FOR
ATTORNEY'S FEES AND EXPENSES**

13 Tawny G. Little, the prevailing party in this Social Security disability appeal, moves
14 under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, for an award of attorney's
15 fees of \$19, 825.37 and expenses of \$653.29. Dkt. 37. The Commissioner opposes the motion,
16 arguing that no fees should be awarded because her position was substantially justified. Dkt. 39.
17 The Court rejects the Commissioner's arguments and **GRANTS** plaintiff's motion.

18 **DISCUSSION**

19 The EAJA authorizes payment of attorney's fees to a prevailing party in an action against
20 the United States, unless the court finds that the government's position on the merits in the
21 litigation was "substantially justified." 28 U.S.C. § 2412(d)(1)(A). To show that its position was
22 "substantially justified" the government must demonstrate that its position had a reasonable basis
23 in both law and fact at each stage of the proceedings, including both the government's litigation

1 position and the underlying agency action giving rise to the civil action. *Tobeler v. Colvin*, 749
2 F.3d 830, 832–34 (9th Cir. 2014). Where the underlying agency decision was not substantially
3 justified, the court need not address whether the government’s subsequent litigation position is
4 justified. *Meier v. Colvin*, 727 F.3d 867, 872-3 (9th Cir. 2014).

5 In this case, the government must show that its position was substantially justified in the
6 ALJ decision denying benefits, at the district court level, where this Court affirmed the ALJ’s
7 decision and denied Ms. Little’s subsequent motion to amend the judgement, and on appeal,
8 where the Ninth Circuit reversed this Court’s decision with instructions to remand this case for
9 further administrative proceedings. The Commissioner argues that her position at the district
10 court level was substantially justified as demonstrated by her repeated success, with this Court
11 affirming the ALJ’s decision and denying Ms. Little’s motion to amend the judgment. Dkt. 39 at
12 2. The Commissioner argues that she was substantially justified on appeal because the Ninth
13 Circuit reversed on an issue that Ms. Little did not raise at the district court level and did not
14 properly identify on appeal. *Id.* at 2-3. The Commissioner does not address whether the ALJ’s
15 decision was substantially justified.

16 Here, the Ninth Circuit found that the ALJ erroneously (1) included two occupations that
17 Ms. Little could not perform in her determination that Ms. Little was not disabled, (2) considered
18 Ms. Little’s age at the time of her application, rather than at the time of the ALJ’s decision, and
19 (3) failed to consider whether to place Ms. Little in a higher age bracket because she was just
20 five months shy of that bracket; the court concluded that these errors were not harmless because
21 (1) the remaining jobs did not exist in significant numbers either regionally or nationally, and (2)
22 placing Ms. Little in the next age bracket would affect the disability determination. Dkt. 32. The
23 Ninth Circuit’s decision shows that the ALJ’s decision did not have a reasonable basis in law or

1 fact. Because the underlying agency action was not substantially justified, the Court **GRANTS**
2 Ms. Little's motion.

3 The Commissioner did not object to the amount of fees Ms. Little requested. The Court
4 has reviewed Ms. Little's motion and supporting declarations and the record, and finds the
5 amount requested is reasonable.

6 The Court therefore **ORDERS** the Commissioner to pay Ms. Little attorney's fees of
7 **\$19,825.37**, and expenses of **\$653.29**. Subject to any offset allowed under the Treasury Offset
8 Program, as discussed in *Astrue v. Ratliff*, 130 S. Ct. 2521 (2010), payment of this award shall be
9 made via check sent to Richard Baum's address: 114 W. Magnolia St., Ste. 400, #137,
10 Bellingham, WA 98225.

11 After the Court issues the order for EAJA fee, the Commissioner will consider the matter
12 of Ms. Little's assignment of EAJA fees to her attorney. Pursuant to *Astrue v. Ratliff*, the ability
13 to honor the assignment will depend on whether the EAJA fee is subject to any offset allowed
14 under the Treasury Offset Program. The Commissioner is directed to contact the Department of
15 Treasury after the order for EAJA fee is entered to determine whether the EAJA fee is subject to
16 any offset. If the EAJA fee is not subject to any offset, the EAJA attorney fee will be paid
17 directly to the order of Ms. Little's attorney Richard Baum.

18 DATED this 29th day of August, 2017.

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21 BRIAN A. TSUCHIDA
22 United States Magistrate Judge
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